

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,

Crim. No. 01-30039-HO

Plaintiff,

ORDER

v.

JOSE PULIDO-VARGAS,

Defendant.

After defendant pleaded guilty to illegal re-entry in violation of 8 U.S.C. § 1326, the court sentenced defendant on January 10, 2002, to a 70-month term of imprisonment. Defendant moves to vacate or correct his sentence.

Discussion

Defendant argues that the court impermissibly enhanced the guideline base offense level by sixteen levels, based on a prior aggravated felony conviction not proved to a jury beyond a

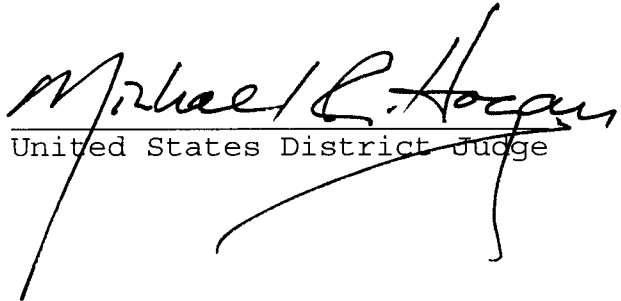
reasonable doubt. The fact of prior conviction may be determined by the court at sentencing. United States v. Quintana-Quintana, 383 F.3d 1052 (9<sup>th</sup> Cir. 2004).

Conclusion

Based on the foregoing, defendant's motion to vacate or correct sentence [#54] is denied.

IT IS SO ORDERED.

DATED this 14<sup>th</sup> day of June, 2005.

  
United States District Judge